

In the Matter of Merchant Mariner's Document No. Z-47757
Issued to: VINCENT J. MANISCALCO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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VINCENT J. MANISCALCO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 14 November, 1952, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended Merchant Mariner's Document No. Z-47757 issued to Vincent J. Maniscalco upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as a wiper on board the American SS FURMAN VICTORY under authority of the document above described, on or about 11 November, 1952, while said vessel was in the port of Mobile, Alabama, he assaulted and battered Sherman Murray, a member of the crew.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of six witnesses including the Master of the ship.

In defense, Appellant offered in evidence the testimony of one other member of the crew. Appellant did not testify in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-47757, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of 18 months; 12 months outright suspension and 6 months on 24 months probation from the date of the order.

From that order, this appeal has been taken, and it is urged that the Examiner was biased and prejudiced against Appellant because of Murray's age; the

Examiner disregarded the aggravating circumstances leading up to the fight; the testimony of the defense witness should be given greater weight than Murray's testimony; the evidence does not support the findings; the order is excessive because Appellant was provoked by Murray; and the decision should be reversed or the entire order made probationary.

APPEARANCES: Mr. Samuel E. Bennett of the Marine Firemen's Union of San Francisco, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 11 November, 1952, Appellant was serving as a wiper on board the American SS FURMAN VICTORY and acting under authority of his Merchant Mariner's Document No. Z-47757 while the ship was in the port of Mobile, Alabama.

At about 2300 on this date, Sherman Murray (a crew member serving as a fireman-watertender) and the night watchman were in the messroom drinking coffee. Appellant entered the messroom and, in a belligerent manner, objected to a box of cereal which was on the table. After an exchange of words with Murray on this subject, Appellant threw the cereal box at Murray who then struck Appellant in the eye and a fight ensued. Murray was badly beaten about the head and face after he fell to the deck. Appellant continued his attack upon Murray after the Junior Third Mate had separated the two men. Finally, the Master and the First Mate stopped Appellant from striking Murray who was then in a helpless condition; and the police removed Appellant from the vessel. Murray was taken to the hospital and given first aid treatment. The fight had lasted about ten minutes. Appellant was 36 years of age and Murray was 67 years old at the time.

There is no record of prior disciplinary action having been taken against Appellant during his eleven years at sea.

OPINION

When Murray struck the first blow, Appellant was entitled to retaliate to the extent necessary to protect himself. But his vicious attack upon Murray went far beyond this point and Appellant became the aggressor as he continued to strike Murray even after Appellant had been ordered several times to stop. This conduct cannot be justified on the basis of provocation alone.

The record discloses that Murray's testimony is substantiated by that of the other witnesses for the Investigating Officer; and that the evidence supports the findings of the Examiner. But in view of the initiative displayed by Murray and Appellant's prior clear record, the order of the Examiner is considered to be excessive and it is modified to read as follows:

ORDER

That your Merchant Mariner's Document No. Z-47757, and all other valid licenses and Merchant Mariner's Documents now held by you, are hereby suspended for a period of six (6) months. This suspension shall become effective from the date of service upon you of a copy of this decision or the surrender to the Coast Guard of all temporary documents issued to you, whichever occurs first.

As so MODIFIED, the order of the Examiner dated at Mobile, Alabama, on 14 November, 1952, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 1st day of June, 1953.